United States Court of Appeals for the Second Circuit



APPELLANT'S BRIEF & APPENDIX

6-212 UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

JOHN CHIARELLO,

Plaintiff-Appellant

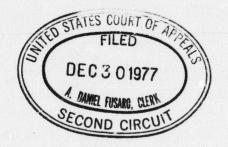
W.

EDWARD BOHLINGER, CORRESPONDENCE OFFICER, and KEVIN J. GALLAGHER LIBRARIAN OF GREENHAVEN CORRECTIONAL FACILITY ..

Defendant-Appellee

APPELLANT 'SE BRIEF and againly

JOHN CHIARELLO PRO SE #67-A-27 BOX 149 ATTICA, N.Y. 14011



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UNITED STATES COURT OF APPEALS FOR THE 2ND CIRCUIT

JOHN CHIARELLO, PLAINTIFF

V/o.

EDWARD BOHLINGER, CORRESPONDENCE OFFICER, AND KEVIN J. GALLAGHER LIBRARIAN AT GREENHAVEN CORRECTIONAL FACILITY

DEFENDANTS

APPELLANTS BRIEF

John Chiarello appeals pursuant to an order granting to the extent of allowing appellant to proceed in Forma Paupers and for transcription of the minutes at government expense. That part of the motion seeking assignment of counsel is denied without prejudice to renewal after the transcript has been recieved. Dated Justy 26,1976 ordered by the Henorable Justices of W.H.M.- J.I.O. and W.H.T. of the 2 ND Circuit Court of Appeals.

THE FACTS

On December 9,1974, the plaintiff filed a Civil Rights violation produced by the defendants Bohlinger, the Correspondence Officer of Greenhaven Correctional Facility, and Mr. Gallagher Librarian of Greenhaven Correctional Facility. Bohlinger recieved the article a short story entitled "Schizophernia And The Monster"

from plaintiff Chiarello on November 14,1974. Accompanied with
the article was a letter addressed to P.E.N. Writeing Award for
Prisoners licated at American Center 156 Fifth Avenue New York,
N.Y. 10010. Both the governing letter and the article were identified as exhibit 2 and 3 that were disignated as such before the
Honorable Judge Milton Pollack on January 22,1976 at the Southern
District Court House. Plaintiff stated that Bohlinger maintained
the article at the Correspondence Office for three days after
having recieved it to be mailed on November 14,174. Bohlinger
then placed it within agother mail box legated at the administration building for the purpose of having it sent to the media
review board (2-56) of the hearing transcript. The defendant
Gallager when he recieved the article at the time that he claims
to have recieved it late in the aternoon on November 14,1974 claims
that he was to busy to have read the material (P-67) although admitt-

Hereinafter, all page numbers appearing in parenthesis directley after a statement refer to the trial record ...

ing neverthless that he glanced over a couple of pages of the article. The facts of which the petitioner maintains, is that Bohlinger held the article for (3) three days and that Gallagher held the article for another 11 days (P-30). The article was retrevied from Gallagher on November 27,1974, a totle of 14 days after the plaintiff placed the story in the mail box to be mailed.

At the hearing plaintiff interposed a complaint of Obstructing of the Commerce and delaying of the United States Mail, the plaintiffs story Schizophrenia And The Monster.

(A) A person employed within a penal institution is not allowed to obstruct or to withold the United States Mail only if the practical in question furthers an important or substantial governmental intrest unrelated to the suppression of expression, Procunier V. Martinez 94 S.CT. Id at 1803.

POINT ONE

2-

The virdict was against the wieght of the evidence. The plaintiff was able to produce a showing of obstructing and withold in

his Schizophrenia and The Monster story for a supposedly inflamatory nature. And if the defendants evaluated the material to be inflamatory then the Federal Courts will distcharge their duty to protect Constitutional Rights. Johnson W. Avery, 393, 483 U.S. 486, 89 S.Ot. 747, 21 L.Ed. 2D 716 (1969). This is such a case. Although the District Court found the defendants without blame, the evidence was contrary to the exclamations of the defendants.

The defendant Bohlinger introduced evidence showing only that he maintained the Shigophrenia and The Monster story for a four and one half hour period (P-57). The defendant Gallagher introduced evidence (P-66) that he recieved the story at approximately 2 0°Clock in the afternoon of November 14,1974, and that he maintained it until the next day up to the hour of 9 0°clock. Approximately a period of 19 hours. A total of about 25 hours between both defendants. Both defendants have not stated the facts correctly, because on January 3,1975 on the complaint of the plaintiff an Assistent Inspector of the United States Post office Department from the Poughkeepsie, N.Y. branch interviewed this plaintiff, and a wittness appeared by the name of Mickaelivaladi

pondent Department of Greenhaven Correctional Facility. At page 2 of plaintiffs affidavit in reply to the Assistent Attorney meral dated March 26,1975, it is mentioned by the plaintiff that when questions given by the Post Coffice Inspector, and by the plaintiff, that the wittness Mickeel Valadi affirmed that he retained the plaintiffs Schizophrenia And The Monster story for 3 three days on the advise of the defendant Bohlinger and that he was unable to account for the extra 11 eleven days that the defendant Gallagher held the story. See Procunier Supra 94 Stott. Id at 1802, the court held: "The dicision of prison officials to es censor or withold delivery of a particular latter must be accompananied by minimum procedural safeguards". A fourteen day delay of a witholding and obstructing of plaintiffs Schizophrenia And The Monster story was far without the bounds of Procunier Supra. It was past the administrative proveldge to censor Mail. Justice Powell stated in Procunier Supra at page 1810....

A government regulation is sufficiently justified if it is within the constitutional power of the government; is it furthers an important or substantial

governmental intrest; if the governmental intrest is unrelated to the suppression of free expression; and if the incidental restriction on alleged first Amendment freedoms is no greater then is essential to the furtherence of the intrest. 391 U.S. at 377, 88 g.Ot., at 1679.

The Court below specifically inquired to the plaintiff
whether he wrote P.E.N. Contest about this (P-35) A Oh, yes, I
did. Q Did they ever respond to you? A No, they didn't. However,
because their was an answer from T.E.N. pertaining to the present
case when it was pending at the court below, this plaintiff now
enters it as evidence that he did write to F.E.N. about the
Secretarys Ms. Michalski's contribution to violate plaintiffs
Civil Rights. The answering letter is attached and marked Appendix
T. Further, the letter inquired as to why Ms. Michalski did not
personally answer my letter to her, that refered to the inquirey at
page 3% of the hearing minutes. Plaintiffs inquirey to Ms. Michalski
ki was diret and to the point About how she directed her response
to Leon Vincent then Superindendent of the Greehaven Correctional—

Facility. Attached hereto is a copy of that letter dated December 13,1974 and is marked appendix 2.

The defendant Gallagher in his letter dated December 17,1974, to Ms. Michaleki in seawer to her letter dated December 15,1974, that she had sent to "con Vincent then Superintendent of Green-haven Correctional Facility stated the following: "The following morning the immate requested that he had already" missed the dead-lime? for sumitting manuscripts. A copy of the defendants letter is attached and marked appendix 3. The defendant Gallagher when he stated to Ms. Michaleki that this plaintiff stated, That he had "Already missed the deadline", was an untruthful explaination made by him.

This plaintiff had never though or did he make the statement that he had Missed the P.E.N. Meard Contest as was subscribed as being said to Gallagher by this plaintiff (P-76). The very fact that this plaintiff instituted the Civil Rihgts issue on December 9,1974 3 three months before the deadline of the contest March 1,1974, a copy which is attached and marked appendix 4, and coupled with the fact that this plaintiff seeked an injunctive stainst tampering with or delaying of the mail, would substantiate plaintiff

contention that he never thought he had missed the deadline of March 1,1975. Coupled with the motion for injunctive relief that was attached to the original complaint dated December 9.1974 is the additional part of Justice Pollack's decision (a part thereof ettached and marked appendix 5) dated April 10,1975, which reads: "That Injunctive relief would now be most since the entry deadling has passed". This then rules out the propertition put forth by the defendant callagher, that this plaintiff ever suggested the idea to retrieve his Schizophrenia And The Monster story because he "Already missed the deadline. In fact, because the defendant Gallagher expressed the "Already missed the deadline" routine in his December 17,1974 letter to Ms. Michalski, she in turn had related back to Ison Vincent Superintendent about how pleased sh was that the inmate's manuscript had not been disaproved by any one. Attached to is a copy of Ma. Michalski's letter as appendix 6. It would seem that Ms. Michalski was not able to understand the the defendant Gallagher was the one who had responded to the letters that she wrote to Leon Vincent the Superintendent of Greenhaven.

On Cross at (P-73) the defendant Gallagher admitted that according to Bulletin No. 60... that thier is no discussion about the review of outgoing mail. In answer to the Courts Hypothetical question (\$-76-77) about an inquirey as to whether Gallagher had showed the plaintiff the letters recieved from Ms. Mchalski appendix 2 and 6, gallagher answered, No. Then to the Courts inquirey of whether the plaintiff knew about the letters that Gallagher recieved from Ms. Mchalski Gallagher replied: "I believe in the course of the case he was awhere of them. "Same page (77)." But see page 36, the plaintiff is asked by the court. But P.E.N. never wrote to you in respons to your letter? A No, they never answered my letter, or if they did I never recieved it.

POINT TWO

The trial judge erred when he dismissed the case. The hearing courts inquirey as to whether the article was inflamatory was reason enough not to dismiss.

The plaintiffs Schizophernia And The Monster story was not inflamatory nor was thier indication that the story had an effect on the security or the order of prison or rehabilitation, (P-49). See Wilkinson V. Skinner, 462 F-2D 670,672-673 (CA2 1972). a clear and present danger must be shown to stop the mail.

The defendants Gallagher and Bohlinger all through thier testimony in the DIRECT and cross, have maintained no reason as to why they should have witheld or obstructed plaintiffs Schizophrenia And The Monster story. Bohlinger claims only that when it arrived at the correspondence office during the morning of November 14, 1974 that it was his duty to send it to the school so that the media review board was able to examine it. (P-58) - School"; has this been approved"; and further on "Has the article been approved, is there an approval for it to go out. The Court continued in Procunier Supra. ... And their are various intermediate positions, most notabi the view that a regulation or practice which restricts the right of free expression that a prisoner would have enjoyed if he had not been imprisoned must be related both reasonably and necessarly to the advancement of some justifiable purpose. Carthers W. Follette 314 Sapp. 1014 , 1024 (SDNY 1970) See also Gates Vs. Collier, 349 Supp., 881, 896 (ND Miss 1972(; Lemon V. Zelker, 358 L. Supp 554 SDNY 1973. Apparently all indication by Bohlinger that a media meview board still remains has left his mind Because when you

Media Review Board board has approved or disaproved the manuscript for mailing— he refers only to "Shool" has this been approved or disaproved (P-58). Bohlingers testimony has terminated Gallaghers testimony as to an institutional Media Review Board. Or yet, a meaning of a Media Review Board has no meaning realy in serving its purpose in censoring the mail. A dual censoring Department has been set up at the Greenhaven Correctional Facility, The Correspondence Department and a Department Called the Media Review Board located somewhere in the area of the Stormville School. In fact the institutional's own Bulletin No. 60(P-69) allows a six week witholding and the censoring of mail for the purpose of publication.

If plaintiffs article Schizophrenia And The Monster had not been witheld or obstructed by the Defendants Bohlinger and Gallagher their would not have been a letter sent by the plaintiff dated September 15, 1976, to P.E.N. specifying the difficulties incurred during November 14, 1974. and as a result of plaintiffs.

The legislator has done away since with the censoring of out going and incoming mail.

letter a reply letter from P.E.M. was recieved on September 21, 1976 from John Morrone employee which is attached and marked apport.

Administrative Bulletin No. 60. (P-69) was a minipulative tool used by the Department of Correction and/or the administrative officials to restrict the freedom of speech. And as long as such an administrative Bulletin No. 60. was in existence that was able to withold plaintiffs Mail for a fourteen day period or for a period sworn to be an amount of four and one half hours by Schlinger and 19 hours by Gallagher then a violation of/or against the 1ST Amendment of the United States Constitution has taken place.

The court's have been willing to require demonstration of a compelling state intresf" to justify censorship of prisoner mail, Jackson V. Godwin. 400 F.2D 527 (CA 5 1968) (decided on both equal protection and first amendment grounds); Morales V. Schmidt, 340 F. Supp. 544 (WD Wis. 1972); Fortune Society V McGinnis, 319 F. Supp. 901 (SDNY 1970). See also Gates V. Collier, 349 F. Fu., 821, 896 (ND Miss 1972). Lemon V. Zelker, 358 F. Supp 554 (ETAL).

When an attempt by the plaintiff to sumit into evidence the Schizophrenia And The Monster story relating to a period in time during 1970, at the Clinton Correctional Facility, where the school authorities did n ot allow the story to be mailed to the National Aeromities and Space Administration, and When the trial Judge (P-20) sustained the objection by the AAtorney General not to allow the evidence in to prove that other members of the prison Department witheld the story, then this is when the Courselow erred. & This was evidence to prove that Schizophrenia And The Monster was not allowed to leave the Clinton Correctional Facility that maintained the same Departmental Bulletin No. 60. that allowed that administration to withold and upstruck plaintiffs story for the following reason, which seems to lean upon an inflamatory reason: "Your story Schizoprenia And The Monster" does not contain Auffic literary merit to mail out. Permission denied. Attached is a copy of this order and marked appendix 8. See Brabson V. Wilkims, 45

Mise 2D 286-

(Supreme Court Wyoming County) The Hontarable Justice Exclaimed.

Warden of State Prison may not interpret obstruct or otherwise delay communication from prisoner to his attorney or any Count Law Enforcement Agency or Executive Official of the Federal and State Governments.

National Aerometics and Space Agency is such an official Department of the State and Federal Government.

The Schizophrenia And The Monster story when asked by the ee Court as to whether or not the piece was rehabilitative as opposed to inflamatory the wittness Meelory replied (P-49-50)....

I would say nonfor two reasons, and at page 50.... I would say that the story, the writing of the story, the revising of the story, even the prospect of publication of the story with its relation to further work that John Chiarello might do, would conduce to rehabilitation.

As to why the defendant sphlinger withhelf and obstructed the plaintiffs Schizophrenia And The Monster story. See page 56 and 57 of the hearing minutest. By the Count: You took it up to the school? The Wittness: No, to the administration Building. They have a box up there where all school materials got Q Why did you do that? A In order for me to send out any articles for

publication I need an approval from the school. Q How do you know that you need that approval? A Well, this here was told to me by the Superintendent when I first took the John and also by Service Unit and School personal.

On Cross (PM74) Gallagher more specifically testified as follows:

When I was hired at Greenhaven Correctional Facility I was told by the acting well, not acting, at the time he was Education Director, Mr. Nicholas Bruno, that I was going to be involved with the media review proceedings. See

Monroe V. Pape 365 U.S. at 187... That an action 1983 action sustained an an action against State Officials whether there conduct was within or without applicable State law and did not require a specific intent to deprive a person of a Federal Right but that the section shall be read in the context of a general Tort Law which, holds a man responsible for the intentional and probable consequences of his act. The defendant Gallagher at page

69 of the hearing minutes stated the following.....

The institutional committee could not make a final decision to approve or disaproval.

Gallagher however, controdicate the expressive statement that he made, at (P-71) he states.

As I stated earlier in this letter, all decisions where to be made by this committee, not any single person.

Apparently the defendant is a Librarian minipulater who has eventually begun a determination upon his own, to protect the wrongs promulgated by the administration that has become master at Green Haven Correctional Facility of what is Inflamatory and and what is literiture.

Psychological oppression has been inflicted by the Defendants Gallagher and Bohlinger, in the present case at part. The oppression is to be condemmed just as much as physical abuse. SeeCA 2....

Orders immediate release for abused N.Y. prisoner. And this could had determined that acts causing mental suffering can even absent attendant bodily pain-violate the eigth Amendment. Lareau W.

ReBougall, 473 F.2D 974,978 (2D Cir. 1972), Cert. Denied, 414 U.S. 878, nor need their be conscious purpose to inflict suffering, for acts causing severe harm to violate the eighth Amendment. Robert V. Williams, 456, 2D 819, 827-28 (5th Cir.), Cert, denied, 404 U.S. 866 (1971).

In fact when asked by counsell for the plaintiff to Gallage's a question about bulleton 60 (19-73) whether thier was a discussion in bulcetin No.60 about autgoing material, the review of ougoing material Gallagher answered. To the best of my knowledge, Sir, thier is nome. Q There is none in Administrative Bulletin 60? A No. Ser. Q Buy its terms, then, Administrative Bulletin 60 applies to incoming material and to material that is in the possession of the inmate? A Well, in the terms of Q By the terms of the document itselft. A It was for incoming material, because if the inmate already had it obviously it

The defendant Cohlinger when asked (61) whether Administrative Bulletin No. 20 states whether you are to submit outgoing publicate lons to the school officials he answers. No it does not. Thus, Bulletins No 60 and Bulletins 20 respectfully make no provisions for outgoing manuscipts to be sensored. Further by plaintiffs counsellsame page 61: Q So that thier is nothing in writing to your knowledge? A Not through the Department of Correction in

M TO TO THE

Albany, only in the institution. It is the Administrators of the institution that has helped the defendants to wictimize themselves. Have allowed both of the defendants to withold and to obstruct plaintiffs Schizophrenia And The Monster story. The United States Codes pertaining to the Obstruction of Commerce and Delaying of the United States Mail by both of the defendants, appeared not to have affected both of them, because of the administrative policy to exaim and to consor all manuscripts leaving the institution for publication. In fact the court (P-59) inquired to the defendant Bohlinger as ten just what his functional capacity was within the Correspondence Office at the Greenaven Correctional Facility. By the Court: So yours is a mechanical function; you send things out if they are approved

Thus far, their was the Chairman of the media review committee who is position was the defendant Gallagher (P-65) plus other unnamed members of the media review board, white were members of the service unit: the Protestant Chaplain, Another member of the

your Honor

for mailing and you dont send them out if they are not approved, for mail ling and thats your total intrest in this subject? The Wittness: Yes, Yes, Emil Pruce, and one other teacher from the Education Department;
And of course thier was Mrs. Baker who all became involved by
the admittence of the defendant Gallagher, to obstruct and to
withhold the United States Mailiant of these indiciduals were to pass
their uproval of censor upon Schizophrenia And The Monster Poor
Scizophrenia And The Monster.

necessarily to the advancement of some justifiable purpose".

Whatever the status was that prompted the defendants Bohlinger and Gallagher to withold and obstruct plaintiffs Schizophrenia And The Monster story when he attempted to mail it, had neverthless of the violated the rightsfaddresses, see Procunier Supra, at 1809 Mr. Justice Powell delivered the Following.

Communication by letter is not accomplished by the act of writeing words on paper, rather, it is effected only when the letter is read by the addressee. Both parties to the Correspondence hage an intrest in securing that result, and censorship of the communication between them necessarily impinges on the interest of each. Whatever the status of a prisoner's claim to uncensored correspondence with an outsider, it is pa plain that the latter's intrest is grounded in the First Amendments guarantee of freedom of speech. And thas does not depend on whether the nonprisoner correspondent is the author or inten recipient of a particular letter, for the addressee as well as the sender of direct personal correspondence derives from the First and Fourteenth Amendments a protection atainst unjustified governmental interference with the intended communication." Lamont V. Postmaster General, 381 U.S. . 301, 85 s.Ct. 1493, 14 1.ED. 2D 398 (1965) . Accorded Kleind-

ienst V. Mandel, 408 U.S. 753, 762-765, 92 S.CT. 25 76, 2581-2583, 33 L.ED.2D 683 (1972): Martin V. City of Struthers, 319 U.S. 141, 143, 63 S.CT., 862, 863, 87 L.ED. 1513 (1943).

The defendants Gallagher and Bohlinger have placed upon the plaintiff as well as P.E.N. American Canter restrictions not belonging to the Mirat Amendments Liberties. Both the defendants admitted that they prevented the Shimpphrenia And The Monster story from leaving the facility so that they were able to cansor its.

First Amendment gaurantees must be "applied in light of the special charteristics of the environment. Tinker concerned the interplay between the right to freedom of speech of public high school students and "the need for affirming the comprehensive authority of the States and of school officials.

consistent with fundamental constitutional safeguards, to prescribe and control conduct in the schools.

Bohlinger the defendant stated on (P-56) "That upon recieving the article in the morning, I took the article up to the adminstra yion building at 10 clock in the afernoon of the same day and put it into the hands of the school official up thier who was in charge in order for this to go over to the media review board to be reviewed". Bohlinger has missed construed the facts concerning exactley what he had done with the Schizoprenia And The Monster story, because at two lines below this testinony, same page line 19, he states to the Courts inquirey: "By the Court: "Y ou took it up to the school? The Witness: "No, to the adminastration building they have a box up there where all school materials go. Bohlinger never placed the manuscript within the hands of a school official, as he had said he had done when he arrived with it at the admistration building. The defefendant had taken the manuscript from the correspondnce department that was an Alter-Ego office of the United Stated post Officec, and the he places within a wooden box suppose dly used to trasport the United States Mail to the school officials for approval and consorship.

The defendant Bohlinger (P-6) admits that when he is shown bulletin 20 that thier is mothing in the directive that allows his dutyt's to summit outgoing publications to the school officials.

This appellant argues that the institutinal rule that bound the defendants to violate appelleants Fourth Amendment rights, also allowed them to consorship of a constitionally protected expression without adequate justification. Morever, this would entitled the respectively to this courts rational putforth in Procunier Supra, at 1807. The Court said and the 1807.

challenge concerns facial gnance, to the First Amendment. Zwickler V. Koota, 389 U.S. 241,252, 88 S.CT. 391, 397, 19 L.ED. 2D 444 (1967). Baggett V. Bullet Supra., 377 U.S. at 397,84 S.CT. at 1326. See note, decency and fairness, an everging judicia rule in prison reform, 55 VA. H. Rev. 841, 842-844 (1971. When a prison regulation or practice offends a fundamental constitutional guarantee, federal courts.

will discharge their duty's to protect constitutional rights. Bohnson V. Avery, 393 J.S. 483, 486, 89 S.CT. 747, 749, 21 LED. 2D 718 (1969).

The defendant Gallagher admits (P-65) that as chairman of the media review committee with other members of that committee: "That they review materials that had been sent into the institution or inmate manuscripts that were about to be sent out for one purpose or other. This media review board, able to do this without compliance of any of the guidlines set down in administrative bulletin No. 60 and just what those compliance of the guidlines in bulletin No. 60 were, was not made known to the plaintiffs counsel or did the Assistant Attorney General Mr. Birch bring it out on direct. The only part of the interpretation of bulletin No. 60 that was made mown was at (P-69 of the hearing minutes.

The plaintiff has made a showing of obstructing and the with holding of his Schizophrenia And The Monster story by the plaintiffs Gallagher and Bohlinger. As Bulletin No. 60 and Bulletin No. 20 should be declared Unconstitutional. The Court is bound by Procunier Supratorreview prison regulations which restrict the freedom of speech. See Mc-Closkey B. Maryland, 337 F.2D 72

OAA4 1964); Let W. Tahaab 352 F.2D 970 (CA 8 1965) Also, thier is Sostre Vv. Mclinnis, 442 ft.2D 178, 199 (CA 2 1971), Certt. denied, Sub Nom. Oswald V. Bostre, 405 U.S. 978, 92 S.Ct. 1190, 31 H.ED. 2D 254 (1972).

The Albany Departmental Media Review Committee the Department of correctional Services at Albany New York has implainted the idea through bulletins 60 and 20, that the prison authorities can even confescate material that has been written by the inmate for the purpose to censor it. And if this is the rational then the plaintiffs contention that his Schizoprenia And The Monster story was deemed by the defendants Gallagher and Bohlinger to be Inflamatory was the truth. Even the piece was deemed to be wierd by Mr. Van Benschoten (P-14) must be true. But see United States V. O'Brien, 391 U.S. at 377, 88S. CT.; at 1679, the court said....

A government regulation is suffictently justified if it is within the constitutional power of the Government

ment; If it furthers an important or substantial governmental intrest; If the governmental intrest is unrelated to the suppression of free expression, and if the incidental restriction on alledged first amendment freedoms is mo greater than is essentially the furtherence of that interest.

At Procunier Supra, at 1811 the Court said

perhaps the most obvious example of justifiable censorship of prisonner mail would be refusal to send or deliver letters concerning escaped plans or containg other information concerning proposed criminal activity."

Plaintiffs Schizophrenia And The Monster contained no such reference to such prison escapes or plots to overthrough the function of prison administration. See (P-44) where professor Mcelroy describes plaintiffs story. And on page 45, in answer toothe Courts inquirey as to whether plaintiffs story was inflamatory. By the Court: "Is it a piece of literature or is it and inflamatory affair? And the answer by the proffesor is given at (P-48), I would say that this is literature or is going to be or could be or is a begining towards being literature. In part Justice Powell states in Procunity Supra at 1811.

Appling the teachings of our prior decisions to the instant context, we hold that consorship of prisoner mail is justified if the following oriteria are met. first, the regulation or practice in question must further an important or substantial governmental intrest unrelated to the suppression of expression. Prison officials may not consor inmate correspondence simply to eliminate unflatering or unwelcome opinions or factually inaccurate statements. Rather, they must show that a regulation authorizing mail censorship furthers one or more of the substantial governmental intrests of security, order, and rehabilatation. Second, the limitation of First Amandment freedoms must be no greator then is necessary or essential to the protection of the particular governmental intrest involved .. Thus a restriction on inmate correspondence that furthers an important or substantil intrest of penal administratin will neertheless be invalid if its sweep is necessarly broad.

The defendants Bohlinger and Gallagher were enabled to place upon Schizophrenia And The Monster their own personal prejudices, and opinions as a standard for mailing plaintiffs story. This is what Mcelroy said about the story on (P-42)....

The story is about a series of events in which a firstperson narrater tells of being mistreated in a prison Hospital in presumably the psychiatric wardIt is quite a riolent story, and the gaurd or guards involved in the mistreatment, w which is the subject of the story, is or are presented in a very unvaorable light."

It thus appears that the defendants had used their intellectual capacity which was not authorized to use by the administrative
Department of Correction in Albany, New York to suppress the unwholesome criticism that Schizophrenia And The Monster violently.
Expressed.

Schizophrenia and The Monster must be protected from such arbitrary Governmental invasion. See Board of regents V. Roth, 408 U.S. 564, 92 S.CT. 2706, 33 L.ED. 2D 548 (1972); Perry V. Sindermann, 408 U.S. 593, 92 S.CT. 2694, 33 L.ED. 2D 570 (1972) See Procupier V. Martinez, Supres at 1815 where Mr. Justice Holemes observed to ...

That over a half century ago... The use of the mails is almost as much a paid offree speech as the right to use our tongues... Milwaukee social Democratic Publishing Co. W. Burleson, 255 U.S. 407, 437, 41 S.CT. 352, 363, L.ED. 704 (1921) Justice Powell continues.... A prisoner does not shed such basic rist amendment rights at the prison gate. See Cruz V. Beto, 405 U.S. 319 92 S.CT. 1079, 31 L.ED. 2D 263 (1972):

Cooper V. Pate, 378 U.S. 546, 84 S.Cr. 103, 12 L.ED 2D SEED. 1030 (CA 4 1971); Rowland V. Sigler, 327 F.Supp. 821 (neb. 1971); Fortune Society V. McGinnis, 319 F. Supp. 901,903 (SDNY 1970). Rather he retains all of the rights of an ordinary citizen except those expressly, or by necessary implication, taken from him by Law, Coffin V. Reichard, 143 F.2D 443, 445 (CA 6 1945). Ascordingly, prisoners are, in my view, entitled to use the mails as a media of free express ion not as a privelge, but rather as a constitutional guaranteed right.

As Mr. Justice Marshall, with whom Mr. Justice Brennan in Procunier Supra, at 1818 expressed....

Whether an O'Henry authoring his short stories in a jail cell or a frightened young inmate writing his family, a prisoner needs a medium for self-expression. It is the role of the First Amendment and this court to protect those precious personal rights by which we satisfy such basic yearnings of the human spirit.

CONCLUSION

For all of the forgoing reasons the judgement of the hearing court should be reversed.

The plaintiff was denied his fundamental constitutional right to have had sent his Schizoprenia And The Monster story from the prison without interference.

Respectfully Submitted

John Chiarello

Sworn to before me this 19 day of November 1977.

Northy SIGNATURE

Notary Public, State of New York
Qualified in Wyoming County
My Commission Expires Mar. 30, 19...

international P.E.N. an association of writers poets, playwrights, essayists, editors, novelists-BLERNDIX with centers in Europe, Asia, Africa, Australia, and the Americas American Center MEL MENDELSSOHN, Executive Secretary BARBARA RICE JONES, Associate Secretary 156 Fifth Avenue • New York City 10010 • (212) 255-1977 • Cables: Acinterpen New York August 26, 1976 PRESIDENT John Chiarello #12212 HENRY CARLISLE . VICE PRESIDENTS Drawer B Stormville, NY 12582 EDWARD ALBEE JERZY KOSINSKI* BERNARD MALAMUD Dear Mr. Chiarello: MURIEL RUKEYSER*
THEODORE SOLOTAROFF We have your letter of July 29, 1976. Ms. SECRETARY THOMAS H. ! IPSCOMB Michalski has resigned and I have taken her place. TREASURER ARTHUR A. COHEN You will be interested to know that without EXECUTIVE BOARD Ms. Michalski there would be no P.E.N. Writing JOHN ASHBERY AARON ASHER Award for Prisoners today. For this reason alone, NONA BALAKIAN BARBARA BANNON I find it difficult to believe that Ms. Michalski DONALD BARTHELME would have knowingly contributed to any violation ANN BIRSTEIN of your civil rights or disregard for your interests. HORIENSE CALISHER
DIANA CHANG
B. J. CHUTE*
MARCHETTE CHUTE*
TRISTRAM COFFIN
STEFAN CONGRAT-BUTLAR On the contrary, the file indicates that she acted as she did in order to assure you and other prisoners at Stormville the opportunity to take part in the

DAVID DEMPSEY E. L. DOCTOROW
FRANCES FITZGERALD
THOMAS FLEMING*
ANNE FREMANTLE
ALLEN GINSBERG
HERBERT GOLD
WILLIAM COVEN WILLIAM GOYEN FRANCINE DU PLESSIX GRAY TALAT S. HALMAN DANIEL HALPERN

ELIZABETH HARDWICK NAT HENTOFF FRANK E. M. HERCULES JULIUS ISAACS MARC JAFFE ELIZABETH JANEWAY E. J. KAHN, JR. BEL KAUFMAN ADRIENNE KENNEDY GALWAY KINNELLY
GALWAY KINNELL
ROBIE MACAULEY
JOHN MACRAE III
JAMES MARSHALL
KENNETH McCORMICK
ARTHUR MILLER*
ALBERT MURRAY VICTOR NAVASKY

CHARLES NEWMAN
SIDNEY OFFIT
TILLIE OLSEN
GRACE PALEY
ROBERT PAYNE
GREGORY RABASSA KIRKPATRICK SALE
NORA SAYRE
ALIX KATES SHULMAN
ISAAC BASHEVIS SINGER
ROGER H. SMITH
SHANE STEVENS MARTIN TUCKER
JOHN UPDIKE
KURT VONNEGUT, JR.
AJLEEN WARD VICTOR WEYBRIGHT HELEN WOLFF

SOL YURICK .* Past President awards program.

If there has been any hardship imposed upon you as a result of these well-intentioned actions, we regret any negligence on our part. Your litigation in the federal courts should assure further protection of your rights under the law. We will be interested in learning the results of your appeal.

With best wishes.

Sincerely yours,

Mel Mendelssohn Executive Secretary

MM:mb

TILL I MOMBER I DEW MIDARFR media Komen puets, playarights, topay six, editors, neverstswith centers in Europe. Asia, Africa, Australia and the Americas American Center KIRSTEN MICHALSKI, Executive Secretary BARBARA RICE JONES, Associate Secretary 156 Fifth Avenue • New York City 10010 • (212) 255-1977 • Cables: Acinterpen New York December 13, 1974 PRESIDENT JERZY KOSINSK VICE PRESIDENTS HENRY CARLISLE Dear Mr. Vincent: THOMAS FLEMING ANNE FREMANTLE We are greatly disturbed to learn that one of the THEODORE SOLOTARITE innates under your care has been refused to submit KURT VONNEGUT, . R. his work to the writing competition sponsored by SECRETARY ROGER H. SMITH P.E.N. TREASURER I believe there is no need for me to point out to JOHN MACRAE, 133 you how important the discipline of writing can be EXECUTIVE BOARS EDWARD ALBEE HANNAH ARENDT in the rehabilitation process and after all isn't that the goal of prisons so that prisoners can be NONA BALAKIAN re-educated to become useful citizens in normal BARBARA BANNOY DONALD BARTHELVE society. ANN BIRSTEIN JAMES BOATWRIGHT HORTENSE CALISHER
DIANA CHANG
B. J. CHUTE
MARCHETTE CHUTE
WALTER CLEMONS As you may not know, P.E.N. is a writers organization which has been in existence well over fifty years. One of its main goals is to insure and encourage freedom of expression and some years ago we conducted a survey STEFAN CONGRAT-BUTLAR DAVID DEMPSEY the result of which is printed in one issue of our ROGER B. DOOLEY MARTHA DUFFY quarterly, The American Pen. I am sending you a copy LEON EDEL because I believe you will find it of interest. JOHN FARRAR FRANCES FITZGER. RMES THOMAS FLECTER Of course, it is completely impossible for us to con-CHARLES BRACELEN FLO duct the writing award unless we have the cooperation ALLEN GINSBER 3 of the wardens. I am pleased to be able to say, up HERBERT GOLD TALAT S. HALMAY to now, we have been very gratified with the understanding and response shown by all the wardens in the BLIZABETH HARDW CK JULIUS ISAACS prisons. Up to now, no manuscript has been held back MARC JAFFE ELIOT JANEWA by the prison authorities and in many prisons, we ELIZABETH JANEW : ! know wardens have encouraged the inmates to participate EDGAR JOHNSC N BEL KAUFMAN LUCY KAVALEP in the program. HERMAN KOGAN We trust we can count on your help also. I very much STANLEY KUNITZ JOHN LAHR hope to hear from you soon. With my very best wishes, THOMAS LASH THOMAS H. LIPSCIVE ROBIE MACAULE! BERNARD MALAMIL ista hichary. JAMES MARSHALL KENNETH McCORV L. MILTON MELTZE? ARTHUR MILLE? ALBERT MURRA!
VICTOR NAVAS!
SIDNEY OFFIT
ROBERT PAYNE Executive Secretary K41:mb Enclosure PETER S. PRESCOTT THEODORE M. PUREY GREGORY RABASSA Leon Vincent, Superintendent SAAC BASHEVIS S VIER Green Haven Correctional Facility SHANE STEVENS Stormville, NY 12582 RALPH THOMPS:N MARTIN TUCKER JOHN JPDIKE VICTOR WEYBRIGHT HELEN WOLFF

Phone: 226-2711

whow is 3



STORMVILLE SCHOOL GREEN HAVEN CORRECTIONAL FACILITY Stormville, N.Y. 12582

December 17, 1974

Ms. Kirsten Michalski P.E.N. American Center 156 Pifth Avenue New York, NY 10010

Dear Ms. Michalski:

Your letter of December 13, 1974 has been referred to me for a response.

In your letter you state that "....(an irmate)....has been refused to submit his work to the writing competition sponsored by P.E.N." You do not state the irmate's name or number but since there was only one piece of material, that there was any question about, I believe I know who is involved.

The policy on any irmate manuscript to be submitted for publication is such that it is to be reviewed and approved by the institutional Media Review Committee. This applied to all work that has been submitted from this institution. This reviewing process is done by a four-member committee, of which I am chairman.

The work in question was forwarded to me one afternoon by an officer from the Correspondence Department for review. Since it was late in the afternoon, I had no chance to show any other members of the Media Review Committee this manuscript. As I stated earlier, all decisions are to be made by the committee, not any single person.

The following morning the inmate requested to have his assuscript returned to him, stating that he had "already missed the deedline" for submitting manuscripts. I gave him back the manuscript, which had not been disapproved by anyone; no decision had even been rade.

This was the only entry there was any difficulty with and this was only because a committee decision had not been made. It appears also that the immate was misinformed as to the deadline because I noted that it was listed as "postmarked no later than Marchil, 1975."

NICHOLAS J. BRUNO Education Director I Ext, 297

THOMAS MAILE Voc. Ed. Supervisor Ext. 252 W. VAN BERSCHOTEN Gen. Ed. Supervisor Ext. 250 H. C. GIFFORD Spec. Subj. Superviso Ext. 346 2

I feel that the P.E.N. Writing Awards is a very good program and, judging by the number of manuscripts our committee has seen, a very well-received one in this institution.

I hope that this will help clear up this matter. If there is any further question, please feel free to contact me directly.

Sincerely,

LEON J. VINCENT Superintendent

APPROVED

Education Director I

KEVIN J. GALLAGRER

Librarian

KJG: jmn

.v. .

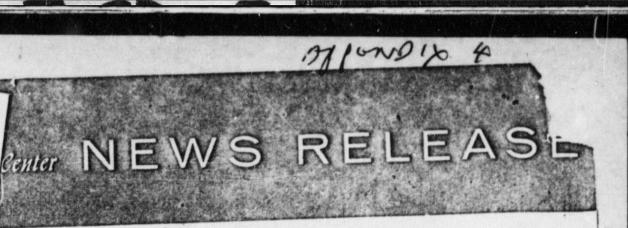


EXHIBIT U. S. DIST. COURT S. D. OF N. Y.

212) 255-1977

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FOR IMMEDIATE RELEASE

September 16, 1974

P.E.N. WRITING AWARD FOR PRISONERS

Two cash awards -- one first prize and one second prize -- will be granted in each of the following three categories:

Poetry: Poems submitted must not exceed 100 lines

Fiction: Prose submitted must not exceed 5,000 words

Non-fiction: Essays submitted must not exceed 5,000 words

Deadline Date: All entries must be postmarked no later than March 1, 1975

Announcement of award winners will be made May 1, 1975.

Judges to be announced.

Manuscripts must be typewritten (double spaced) or clearly printed on one side of 8 1/2 x 11 paper. Authors must not submit more than one entry in each category.

Efforts will be made to facilitate publication of winning entries, either in The American Pen quarterly or other publications.

Send manuscripts to:

P.E.N. Writing Award for Prisoners P.E.N. American Center 156 Fifth Avenue New York, NY 10010

This program is made possible by a grant from the National Endowment for the Arts in Washington, D.C., a federal agency created by Act of Congress in 1965.

P.E.N. International, a world association of writers with centers in Europe, Asia, Africa, Australia, and the Americas

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK OFFICE OF THE CLERK UNITED STATES COURT HOUSE, FOLEY SQ NEW YORK, N.Y. 10007

In this suit filed on January 13,1975, plaintiff seeks an anjunction against any tampering with or delaying of the Mail and \$10,000 in damages.

injunctive relief would now be most since the entry deadline has passed.

prets, plannights, essents edies arrents Ah centers in Carroe, Asia, Serica, Australia, and the Americas



American Center

KIRSTEN MICHALSKI, Executive Secretary BARBARA RICE JONES, Associate Secretary

December 23, 1974

156 Fifth Avenue . New York City 10010 . (212) 255-1977 . Cables: Acinterpen New York

PRESIDENT JERZY KOSINSKI

VICE PRESIDENTS HETIRY CARLISLE THOMAS FLEIMING ANNE FREMANTLE , KURT VONNEGUT, JR.

> SECRETARY ROGER H. SMITH

TREASURER JOHN MACRAE, III

EXECUTIVE DOARD EDWARD ALBEE HARRAH ARENDT GOTA BALAKIAN BARBARA BANTION DOTALD BARTHELME ATIN BIRSTEIN JAMES BOATWRIGHT HORTENSE CALISHER
DIANA CHANG
B. J. CHUTE
MARCHEITE CHUTE
WALTER CLEMONS STEFAN CONGRAT BUTLAZ DAVID DEMPSEY MICRITIA DUFFY LEON EDEL JOHN FARRAR FRANCES FITZGERALD WIS THOMAS FLEXNER CHARLES BRACELEN FLOCO ALLEN GINSBERG

ELIZABETH HARDYICA JULIUS ISAACS ELIOT JAMENIAY ECIZABOTH JUNEVIAY EOGAR JOHNSON BEL KARRAMI LUCY KAVALER HEREIGH TO OWN STORY LABOUTZ MATERIAL AND MEY CONTROL THE TANK THE T

TALAT S. MALMAN RUBERT HALSBAND

HETCH LITETZER ABIRDA LILLER A BERT L'IRRAY VICTOR RAYASKY FIGURE REVENITY

SHORTY OFFIT

ROBERT PAYNE

FIGURE S PRESCOTT

FIGURE

PATER THE MACTIN TUCKER
JOHN UPDIKE
VICTOR WEYERIGHT

HELES WOLFF

Dear Leon Vincent:

Thank you so much for your letter of December 17th. We were so pleased to learn from you that the innate's manuscript had not been disapproved by anyone and no decision had even been made and that actually it was all a deadline date misunderstanding.

Now that this misunderstanding is cleared up, we very much hope you will, indeed, inform this inmate of the deadline date and that it is not at all too late to submit his work for the P.E.N. Writing Award for Prisoners.

We are pleased that you feel the contest is a very good program and we feel certain you will not only make a special effort to encourage this inmate to submit his work, but also to encourage other inmates as well.

With my very hest wishes.

Sincerely yours.

Kirsten Michalski Executive Secretary

ill! : nb

Loon J. Vincent Tuncrintendent Stormville School Green Haven Correctional Facility Stormville, NY 12582

cc: Kevin J. Gallagher Librarian



American Center

MEL MENDELSSOHN, Executive Secretary BARBARA RICE JONES, Associate Secretary

156 Fifth Avenue ● New York City 10010 ● (212) 255-1977 ● Cables: Acinterpen New York

PRESIDENT HENRY CARLISLE

VICE PRESIDENTS EDWARD ALBEE
JERZY KOSINSKI*
BERNARD MALAMUD
MURIEL RUKEYSER*
THEODORE SOLOTAROFF

SECRETARY THOMAS H. LIPSCOMB

TREASURER ARTHUR A. COHEN

EXECUTIVE BOARD JOHN ASHBERY AARON ASHER NONA BALAKIAN BARBARA BANNON DONALD BARTHELME ANN BIRSTEIN
HORTENSE CALISHER
DIANA CHANG
B. J. CHUTE*
MARCHETTE CHUTE*
TRISTRAM COFFIN
STEFAN CONGRAT-BUTLAR
DANIE ASMESSEY STEFAN COPFIN
STEFAN CONGRAT-BUTLAR
DAVID JEMPSEY
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FRANCES FITZGERALD
THOMAS FLEMING*
ANNE FREMANTLE
ALLEN GINSBERG
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WILLIAM GOYEN
FRANCINE DU PLESSIX GRAY
TALAT S. HALMAN
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JULIUS ISAACS
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E. J. KAHN, JR.
BEL KAUFMAN
ADRIENNE KENNEDY

E. J. KAHN, JR.
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ROGER H. SMITH
SHANE STEVENS
MARTIN TUCKER
JOHN UPDIKE
KURT VONNEGUT, JR.
AILEEN WARD
VICTOR WEYBRIGHT
HELEN WOLFF
SOL YURICK

* Past President

September 21, 1976

John Chiarello Drawer B Stormville, New York 12582

Dear Mr. Chiarello:

Thank you for your letter of the fifteenth to Mel Mendelssohn, which has come to my attention. Both Mr. Mendelssohn and I are very glad that you have smoothed over the greater share of the difficulties involving your short story, and by all means, do re-submit it this year for the '76-'77 P.E.N. Writing Award for Prisoners.

If further hearings do materialise, let us know how your case progresses. Certainly, if I can be of any assistance concerning your writing, feel free to write

> Best wishes, in monne

John Morrone

STATE OF NEW YORK

DEPARTMENT OF CORRECTION

CLINTON PRISON

Interdepartmental Communication

Date March 2, 1970

From:

M. Huggins, Education Supervisor

To: Chiarello # 43450

Subject: Story for National Asuronautics

Your story "Schizophrenia and the Monster" does not contain sufficient literary merit to mail out.

permission denied.

Miller Huggins Education Supervisor

This is a true copy as was taken from the original, and as was stated at page 19 of the hearing minutes.

SOUTHERN DISTRICT OF NEW YORK JOHN CHIARELLO, Plaintiff, #42216 v. 75 CIV. 154 (MP) MR. BOHLINGER, Correspondence Officer, MR. K. GALAGHER, Librarian PRO SE at Green Haven Correctional Facility,: Defendants.

Milton Pollack, District Judge.

UNITED STATES DISTRICT COURT

Defendant Bohlinger, the correspondence officer, and defendant Galagher, the librarian, at Green Haven Correctional Facility, move to dismiss this prisoner's pro se civil rights action for failure to state a claim upon which relief can be granted pursuant to Rule 12(b)(6). Plaintiff alleges that the defendants deprived

^{1/} The factual allegations, which are merely hypothesized as being true since this is a Rule 12(b)(6) motion, are taken from plaintiff's affidavit in opposition to the motion as well as the complaint. See Haines v. Kerner, 404 U.S. 519 (1972). 60 0 24

him of his First and Fourth Amendment rights by "obstructing and delaying" the mailing to the P.E.N. American Center in New York City of his article entitled "Schizophrenia and the Monster" to be entered in a writing contest for prisoners. The rules of the contest called . for all entries to be postmarked not later than March 1, 1975. Plaintiff states that he sent his article to the correspondence room for mailing on November 14, 1974. Bohlinger and Valadi, another correspondence officer who is not a defendant in this suit, read the article and three days later sent it on to be read by Galagher, who was purportedly to make a final decision as to whether the article should be permitted to leave the institution. On November 27th, fourteen days later, plaintiff inquired about the status of his article, and Galagher is alleged to have responded that the story was inflammatory and was in his locker. Galagher stated that he did not approve of its leaving the institution, and that plaintiff's article must further be

Galagher stated that he did not approve of its leaving the institution, and that plaintiff's article must further be sent to other members of the media review board for approval.

Plaintiff thereupon retrieved the article.

^{2/} Neither plaintiff nor defendants have referred to the applicable administrative regulations on the censorship of inmate correspondence.

On January 3, 1975 a postal inspector investigated the facts of the alleged withholding and obstruction of plaintiff's story.

In this suit filed on January 13, 1975, plaintiff seeks an injunction against any tampering with or delaying $\frac{3}{}$ of his mail and \$10,000 in damages.

officers may open and read the outgoing and incoming correspondence of inmates and in appropriate circumstances may edit or refuse to mail offending material. E.g.,

Procunier v. Martinez, 416 U.S. 396, 412-13 (1974) (class action challenge to certain regulations); Sostre v.

McGinnis, 442 F.2d 178, 199-201 (2d Cir. 1971), cert.

denied sub nom. Oswald v. Sostre, 405 U.S. 978 (1972);

Corby v. Conboy, 457 F.2d 251 (2d Cir. 1972); LeMon v.

Zelker, 358 F. Supp. 554 (S.D.N.Y. 1972). Departmental policy avowedly permits inmates to mail confidential and sealed letters to governmental executives, courts, and attorneys in view of objectives of re-socialization of inmates

^{3/} Injunctive relief would now be moot since the entry deadline has passed.

and assistance in solution of personal and legal problems. However, an inmate's right to mail letters to his family or friends is, for obvious reasons, not absolute. E.g., Corby v. Conboy, supra. Similarly, an inmate newspaper prepared for distribution both within and without the correctional facility may be subjected to pre-publication review and in appropriate circumstances objectionable articles may be edited. The Luparar v. Stoneman, 382 F. Supp. 495 (D. Vt. 1974).

Thus, it is clear that a complaint does not necessarily state an actionable wrong merely by alleging that the correspondence officers reviewed the contents of an article before deciding whether or not it should be sent out from the prison.

The refusal to mail is a safeguard erected to conserve the substantial governmental interests of security, order, and rehabilitation. See, e.g., Procunier v.

Martinez, supra; The Luparar v. Stoneman, supra.

However, the mere conclusion of an officer that an article is inflammatory is a constitutionally insufficient justification for his refusal to mail the article and would state a cause of action under §1983 from the perspective of

Rule 12(b)(6). See Corby v. Conboy, supra; The Luparar v. Stoneman, supra.

An open question here is whether there was a refusal to mail or whether the article was withdrawn from mailing when plaintiff learned that it must be sent to other members of the media review board for approval. If, as suggested by the defendants, there was no official decision to refuse to mail the article and plaintiff simply became restive and disgruntled with the delay or unwilling to have the article go to other members of the media review board and therefore withdrew the article, his claim that his First Amendment rights were violated would be most dubious.

An evidentiary hearing would settle the facts and accordingly the motion to dismiss based on the face of the claim is denied.

SO ORDERED.

April 8 - 1975

Milton Pollack

U.S. District Judge

DOCKET FILING DATE DEMAND JUDGE DIST/OFFICE JURY DOCKET N/S NUMBER MO. DAY YEAR 23 OTHER NUMBER DEM. NUMBER 208-1 0154 01 13 75 75 550 1 0848 75 0154 DEFENDANTS Pollack, J.

PLAINTIFFS

CHIARELLO, JOHN

MR. BOHLINGER, Correspondence Officer MR. K. GALAGHER, Librarian at Greenhaven Correctional Facility

CAUSE

42 U.S.C. 1983 Prisioner Civil Rights Action.

ATTORNEYS

John Chiarello # 12212 Drawer B. Stormville, N.Y.

Louis J.Lefkowitz Atty Gen. of State of NY 2 World Trade Center, NY10047



John Chiereslo #67-A-27 Box 149 Attica, N.Y. 34011 December 27,1977 Olga Valentine Clerk United STates Court of Appeals Second Circuit Dear Ms. . Valentine: I have recieved your card, and want you to know that I did perhaps forget to include a procof of service. Nevertheless I personaly prepared an envelope addressed to David L. Hirch the Deputy Assistant Attorney General of Counsel for the defendants. All oft the briefs were notarized on November 19,1977 and then mailed on November 25.1977. Please be assured that Mr. Birch recieved his copy. I am sure that if the court inquires of Mr. Birch as to whether he recieved the brief he will affirm it. However, if he does not, then I will of cause zerox my copy and send him one .. But I don't think that Mr. Birch would denie that he recieved a copy of the brief. Thank you for letting me know the status of what is taking place. In another letter in due time I will inquire of other cases pending before the Court of Appeals. These inquires are pertaining to the cases that were dismissed in the Southern District Court. The Glerk of that Court has informed that she sent those cases on appeal to the Court of Appeals. They were cases that were dissmissed by various Judges. Please send me another card which will aknoweldge this letter, because I do not want to lose this case on account of the Attorney General not stating that he recieved the Briefs. Sinegroly Charle P.S. . I am sure that in the letter that I sent to the court, that I stated that I had forwared to the Attorney General his copy. Sometime this all gets confusing. Thank you again.. Merry Chirstmas and a happy New Year to you to.

75-0154 Judge Pollack John Chiarello -vs- Mr. Bolinger, Correspondence Officer

DATE	NR.	PROCEEDINGS
01-13-7 01-13-7	5 '	Filed complaint and issued summons. Filed ORDER that pltff. is permitted to file his complaint without prepayment of fees, etc. Chief Judge Edelstein.
01-13-75	/	Filed true copy of Complaint and Order that pltff is permitted to file without prepayment of fees, etc. (of 1/21/75)
03-07-75	-	Filed Order that defts' time to file response to complaint extended to 3/18/75. Pollad
03-17-75 03-17-75		Filed Defts Affdvt&Notice of Motion re: dismissing complaint Filed "Memmrandum of Law in support of motion to dismiss.
04-09-75		Filed OPINOON #42216.An evidentiary hearing would settle facts and accordingly the motion to dismiss based on face of claim is denied.So Ordered.Pollack,J. (mm by Pro Se Clk)
04-09-75	1	Filed Pltffs Proof of Service.
04-17-75		Filed ANSWER of Defts ANSWER.
5 -01-75 4-09-75	1	Filed answer in reply to answer of defts, of PLTFF. Filed affidavit of J.Chiarello in reply to deft's opposition, with proof of service.
08-22-75	1	Filed Memo End.on affdvt of Petitioner in forma pauperis. In this Civil Rights action the pltff has proceeded pro se. There is no sufficient basis for the appt. of
		counsel in this case and the expense of litigating is a burden which the pltff bears. The application is denied. So Ordered. Pollack, J. (mm by Pro Se Clk)
08-22-75		Filed letter from Petitioner to Judge Pollack re: motion for assignment of counsel.
01-15-76	1	Charles&Lott set 1/20/76. The Trial begun before Pollack, J. with non-jury.
01-22-76		"constitute Court's findings of raconclusions of law as required by Rule 52(a)
	١,	FRCP. So Ordered.Pollack,J dated 1/27/76.
01-27-76	1	Filed JUDGMENT, Ordered that defts. have judgment against pltff dismissing complaint. Clk. (mr)
0 2-04=76	1	Filed Writ of Habeas Corpus Ad. Testificandum. John Chiarello brought before Judge of
		our district and returned to Greenhaven Corr. Facility under safe and secure conduct without prepayment of fees this 1/15/76. Clk. Foregoing Writ is allowed. Pollack, J. (mm by Pro Se Clk)
Ò		with Marshal's Return of Service that on 1/23/76 .Writ fully execufeddon 1/23/
		by receiving from custody of Metropolitan corr.center ,NYand transporting to Greenhaven Corr.Facility and remanding him to custody of that institution. Frank A.Julkano,U.S.Marshal. Writ Satisfied. Pollack,J.
02-04-76	/	Filed Writ of Habeas Corpus Ad. Testificandum. Frank Lott beought before Judge of district&ret. to Greenhaven Corr. Facility, etc. Clk. Foregoing writ allowed. Pollack, Juliano, U.S. Marshal's return of service by Frank A. Juliano, U.S. Marshal transporting
		same to Greenhaven Corr. Pacility&remainding to custody of institution. Writ Satisfied. Pollack, J(mm by Pro Se Clk)
03-03-76	1	Filed Memo End.on atchd notice of appeal by pltff dated 2/9/76. Notice of appeal
		annexed hereto is to be filed herein. Motion for leave to proceed in this civil damage suit sent in forma lauperis and for a direction to the Clk to furnish pltff with trial minutes are denied. Pltff should proceed at his own expense herein if he desires to appeal. So Ordered. Pollack, J. (mn by Pro se Clk)
03-09-7 04-04-77	1	Filed true copy of USCA,2nd Circuit that appeal from order is dismissed.Clk.m/n Filed true copy of USCA,2nd Circuit that motion is granted to otentiof allowing
		appellant to proceed in forma pauperis and for transcription of minutes at covt expense. That part of motion seeking assignment of counsel is denied without prejudice to renewal after transcript has been received. Mulligan,